Criminality and the exclusion of Maori

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Te rongonui o te taniko
kei roto i te whiriwhiri noa
mau tonu tona ataahua

The beauty of taniko
is that there is more than one pattern.

Not everything that is faced can be changed,
but nothing can be changed until it is faced.
(Baldwin)

I INTRODUCTION

In reading the Crimes Bill, and the topics to be covered in the various papers to be presented on it, one is reminded of two Shakespearean quotations - "Zounds I am bethump'd with words" and "the first thing we do is kill all the lawyers".

The Bill is clearly a voluminous document drafted by lawyers. The discussion of it will undoubtedly be equally voluminous and will produce more words crafted by lawyers. They will analyse its explanatory notes, debate its clauses, and discuss its esoteric interstices. And there is much in those interstices to debate and query. As just one example, clause 21 states that an act can be intentional if knowledge of its consequences is "highly probable". The explanatory note claims nothing magical about this term and compares it to the use of "almost certain" in the analogous United Kingdom Code. Nothing magical perhaps, but certainly something unclear and debatable. However, no matter how much debate arises from the Bill, it will all take place within a particularly confined context: a context which accepts the Bill as a flawed but necessary given. Its drafting form will be questioned, but not its philosophical base. Its particular sections will be debated, but not its cultural appropriateness. Because the Bill has been defined within a cultural and constitutional process that is accepted and understood, the form and the content of most of the debate will inevitably be confined by that process.

For Maori people, the restrictions of that type of debate are unacceptable. For nearly 150 years the Maori people have made submissions to various Parliamentary Select Committees considering legislation. Whether the legislation has concerned Maori fisheries or public finance, the essence of those submissions has had to be the same - the legislation ignored the Treaty of Waitangi, and was monocultural in its structure, its philosophy, and its application. The proposed Crimes Bill is no exception.

Indeed the thesis to be developed in this paper is that the Bill is predicated upon a philosophy and notion of criminality that is, to use a sociological truism, white, male,

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and middle class. Based upon an essentially English heritage with infusions of the United States Model Penal Code, the Bill reflects the simple fact that:

> ... what (is) criminal is what the Authorities define as criminal ... and it is given effect only through a set of social relationships.[1]

It is clear that the authorities responsible for this Bill are monocultural, and that the definitions which they use arise from the same monocultural base. The Bill is simply a Criminal Code which reflects a particular and exclusive notion of criminality and criminal liability. In the process of its drafting, there has been no Maori input or analysis. In the establishment of its philosophical base, there has been no recognition of those ideals of Maori law which determine the unacceptability, and hence the criminality, of certain actions. Instead the Bill has merely perpetuated a set of monist and culturally specific attitudes about social values and social relationships. It has excluded Maori perceptions in a way which has characterised all legislation since 1840.

Viewed within this context, this paper addresses the Bill under 3 main headings:

1 The ideological and cultural bases of the Bill are monocultural and exclusive of Maori values and concerns.

2 The Bill is not so much a mechanism to protect the Maori, but rather it is part of an ongoing process in which the law is used as an instrument of socio-racial control and oppression.

3 The philosophical foundations of the Bill make it inevitable that the rights of Maori as tangata whenua and as co-signatories of the Treaty of Waitangi will be ignored.

II THE BASES OF THE BILL

Any system of law is shaped by the history and values of its particular culture and is adapted over time to maintain a sense of social order. Most have been derived from a concept of divine authority which has been exercised through allegedly impartial human agents, or has been incorporated into the belief systems whereby divine sanction is accepted as direct and personal. In both cases, the system is one which is attuned to the particular cultural needs of its people. It provides a myth of externally sanctioned order, and the reality of control by which societies regulate conduct and maintain harmony.

The Pakeha criminal law and the processes which have been established to enforce it in New Zealand are regarded as the cornerstone of the "Rule of Law". They are seen to represent the community desire for peace, good order, and protection from harm. Their roots are in the Western Christian heritage, their growth has been nurtured by the

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1 R Hill, *Policing the Colonial Frontier* (vol 1 of the *History of Policing in New Zealand*, 1986) 19.

interaction of its particular socio-cultural and economic theories, and their contemporary manifestation perpetuates a set of attitudes which reflect its history.

Those attitudes shape, and in turn are shaped by, the dominant social and cultural context. Within that context, the act of theft is given definition only through a framework of particular relationships and specific concepts of ownership. The act of taking a life is rendered unconscionable only within certain culturally recognised boundaries. These philosophical and cultural definitions of crime are linked to the political bases of authority and power in ways that are close and crucial. Their inter-relationship means that the definition, interpretation and implementation of the criminal law is largely ideological. The law is a means of:

> [m]aintaining bonds of obedience and deference, in legitimising the status quo, in constantly recreating the structure of authority which [arises] from property and [which] in turn protects its interest.[2]

This legal purpose is clearly political, and the criminal law is merely an instrument to promote a particular capitalist ideology. By defining as unacceptable those acts which directly threaten the economic status quo, be it treason or theft as a servant, or by basing definitions upon the indirect protection of a property interest, as in the origins of rape as damage to a chattel, the law has always reflected the ethos and ideology of economic patriarchy.

That ideology has enabled the law to be seen as a thread which binds together notions of property, authority, and capital. Its beginnings in the Western Christian ethos were shaped by disparate influences ranging from the Stoics of Ancient Greece to the Canonists of Rome. Rather than being what the then Minister of Justice, Geoffrey Palmer, recently called a "pure and unpolluted stream", the criminal law has been a muddied pool stirred by varying forces and influences within Western history.

For many centuries those forces were shaped by God and by terror. With no standing police force to enforce the law, crimes became punishable by acts of torture, brutality, and death. It has been calculated that between 1688 and 1820 there were over 200 offences which carried the death sentence.[3] This period of increase in capital punishment coincided with the establishment of property as an interest sanctioned as part of the law of nature, part of the divine order of things.

In this period, society and law were no longer concerned with justice or peace or charity. The Divine Will as an ethos of Christian love was replaced by the interest of capital. The philosopher John Locke stated in 1690 that "Government has no other end but the preservation of property".[4]

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2 D Hay, *Albion's Fatal Tree* (1973) 25.

3 Sir Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750* (Vol 1 *The movement for reform,* 1948) 4.

4 John Locke, *The Second Treatise on Government* (1690) section 85.

Once property had been so deified, it became the measure of all things, including the process by which certain acts were defined as criminal. The religious fervour of earlier law became a capitalist fervour of legally protecting property interests.

Thus the act of forgery became a capital offence because, to quote a politician of the time:

> Forging is a stab to commerce, and only to be tolerated in a commercial nation when the foul crime of murder is pardoned.[5]

The interests of a particular type of society were therefore granted the protection of the law. Today, three centuries later, the criminal law protects those same interests.

But the law of course is more than a palimpsest of ideology. It is also a powerful and profound cultural statement. Political ideologies do not develop within a vacuum. They grow within, and are shaped by, the values of a particular culture in a process of symbiosis and interdependence. Thus the New Right has arisen from a Western culture predicated upon maximising profit and the myths of efficiency. That culture has in turn been moulded by a capitalist ethic which has made acceptable the ideas of individuated responsibility and glaring socio-economic disparity. Culture has shaped the ideology; the ideology has reflected the values of the culture.

The criminal law is a product of this symbiosis. It is based on perceptions about the function or dysfunction of certain acts in relation to the particular cultural ideals of society. The outcomes of certain acts become important and relevant to the determination of criminality, if the hurt occasioned is disruptive of a particular sense of order and a particular set of cultural values. In this context, the question of what is a "crime" is one of definition, not of the act itself, but of the reasons why the act may or may not be culturally unacceptable. The question of how the dysfunction created by any criminal act is then to be remedied is also a matter of cultural definition.

The clearest and most often cited example of this process of definition is of course the act of killing. The act of taking a life is not in itself a crime. It becomes a crime only when certain defined criteria are met. These criteria arise from definitions within a culture and will differ across cultures. They may also differ within a particular culture so that, for example, intentionally killing an enemy in war is not generally a crime, but intentionally killing a person in peace time is. The act and its consequences are the same, but culture (and politics) define whether it will be criminal.

The cultural and political definitions which underlie this Bill, its philosophy, are clearly Pakeha. They reject any Maori perspective of criminality and thus reaffirm the view that "one law for all" means "one Pakeha law for all". They also continue the constitutional rejection of Maori participation in the process of legal definition, and maintain the cultural arrogance of dismissing any notion of Maori law which could contribute to that process.

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5 Above n 4 section 3.

Throughout our shared history, Pakeha experts have made many assumptions about Maori society. One of the most persistent is that because Maori society did not possess a western-style legislature or judiciary, it did not possess law, since "... there is no law until there are Courts".[6] Such a view meant that any Maori institutions used to maintain social order could be dismissed as merely expressions of "lore" or quaint and sometimes barbaric customs. When this principle was framed within the fundamental precept that: "the colonists and the Maori should form but one people under one equal law",[7] it became easy to also dismiss the philosophy, the matauranga or jurisprudence, which underpinned Maori law. It became possible, in other words, to dismiss the specific Maori cultural definitions and ideology which had shaped Maori notions of criminality, and replace them with those of the colonising power.

That dismissal and replacement continues in the present Bill, yet the philosophies which gave force to the institutions of Maori law, and in particular to what may be called Maori criminal law, still exist. Their continued rejection by Pakeha law is an act of cultural myopia that may well have profound social and constitutional effects.

However, what are the particular ideals and institutions of Maori law? Before answering this question there must first of course be an acknowledgement by Pakeha law that Maori society did have a distinct set of conventionally approved means of ensuring acceptable behaviour - a Code of Law. A "body of ... rules recognised by [the] community as binding".[8]

Such a code clearly existed. Its bases, constructs and methods of application were naturally quite different from the State-centred capitalist model of Western jurisprudence. Yet the system was clear and defined, and Maori people knew which acts were unacceptable "hara" or "crimes".

The definitions of "hara" arose from a framework of social relationships based on group rather than individual concerns. The rights of individuals, or the hurt they may suffer when their rights were abused, were indivisible from the welfare of the whanau, the hapu, the iwi. Each had reciprocal obligations founded in a shared genealogy, and a set of behavioural precedents established by common tipuna. Those precedents became te tikanga o nga hara, the "criminal code", and were accepted as binding because they:

> were the law which came from the wisdom of our past ... which binds us to our tipuna.[9]

They became part of the process by which certain acts were made subject to sanction. These definitions of unacceptability were based not so much on the fact that people had individual rights, but rather that they had collective responsibilities. They were based too on the specific belief that all people had an inherent tapu which must not

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6 W Seagle, *The Quest for Law* (1941) 46.

7 *Memorandum from EW Stafford to the Governor* Appendices to the journals of the House of Representatives, 1858, E-5, 8 (para 6).

8 *Concise Oxford Dictionary* (7th ed).

9 J Rangihau, *Korero* (April 1986).

be abused, and on the general perception that society could only function if all things, physical and spiritual, were held in balance.

The commission of any hara would damage that tapu and upset that balance. Constraints on behaviour, a criminal law, had therefore to be developed to preserve harmony within and among individuals and their community. That law was not an isolated set of rules to be invoked only upon an infringement of accepted behavioural limits. Neither was it part of a distinct discipline to be "learned" separately from the spiritual and religious beliefs of society. Instead it grew out of and was inextricably woven into, the religious and hence the everyday framework of Maori life. It reflected a special significance which was manifest in the spiritual ties of the people to their Gods, and the whakapapa shared between individuals and the ancestors who bore them. The Maori in fact lived, not under the law, but with it. This inter-relationship affected the definition of the criminal act itself, the ideas of responsibility for it, and the process by which the hara would be redressed.

Because individuals were inextricably linked by whakapapa to their whanau and iwi, so were their actions the unavoidable responsibility of the wider group. An offender could not be isolated as solely responsible for wrongdoing; a victim could never be isolated as bearing alone the pain of an offence. There was a collective, rather than an individuated criminal responsibility, a sense of indirect as well as direct liability.

The inter-relationship between the deities, the ancestors, and the living, thus provided the base of definition for both crimes and responsibility. Certain acts were "criminal" not so much because of the immediate imbalance which they caused or the social dysfunction which they created, but because of the behavioural prescriptions laid down through the interdependence of the living and the ancestors. The act itself was less important in defining criminality (or explaining offending) that the reasons why it was defined as unacceptable.

Thus the act of rape was a hara punishable by death, not just because it physically hurt the victim, nor because, as in early English law, it damaged a chattel owned by a man. Rather it was forbidden because it violated the inherent tapu of woman. It thus in turn upset the spiritual, emotional and physical balance within the victim herself, and within the relationships she had with her community and her tipuna. The act of rape was therefore proscribed to protect that balance and to preserve her tapu.

The crime of incest was similarly predicated in a specific weave of ancestral and spiritual prohibition. Its criminality also lay in the violation of tapu, a concept given particular emphasis by the Maori term for incest - "kaitoto" or "eater of blood". And if the reasons for prohibiting incest were found in ancestral definitions of tapu, the explanation for its punishment were also found there. In the Maori creation saga, Tane made love to his daughter Hine-titama, who fled in shame to the underworld. There, as Hine-nui-te-po, she ensures death will eventually befall all humans.

In this sense, Maori law was no different from the laws of other indigenous peoples. The purpose of the legal processes was to ensure order and the survival of the collective and the individual. The nature of what was to survive, what was to be ordered, was an

intricately interwoven taniko centering around group relationships, and the respect and reverence for tipuna and land from which the sense of order came.

The law thus embodied ideals, hopes and potential, as well as a longing for harmony. It strengthened and directed individuals and iwi. The nexus between the spiritual and the temporal was so close as to refuse separation. The links between culture and matauranga were so close as to be indivisible in the process of defining wrongdoing.

This indivisibility or inter-relationship reflected what may be called the Maori view of the world - a warm, deep and lasting communal bond among all things in nature with a common vision of their interdependence. This consciousness created a collective culture that has proved resilient in spite of all that has happened to it - it continues to be the centre of the tribal circle, the foundation of a whispering ideology of identity, strength and self-determination. The Maori community has at times resembled the beaten grass of a northern coast, but with the aid of an unbroken communion with the ancestors, Maori people have never allowed their ideals or values to perish.

These values are the same as those which underlay the order of Maori criminal law. They, and the definitions of specific processes and hara which they permeated, proceeded from a different base from those in the Crimes Bill. The explanatory note to the Bill states that "the definition of an offence commonly refers to circumstances that must exist if there is to be liability". A similar clause in Maori law would focus more on the reasons for specifying particular circumstances, so that the definitions of hara would differ from those in the Bill not in the nature of the act so much but rather in the reasons why the act is unacceptable.

In relation to the Bill, this difference between hara and the Pakeha process of defining crime is important for two main reasons. First, although the Pakeha substantive law and te tikanga o nga hara may appear to share many similarities, the latter is inevitably excluded in the culturally specific defining process which has created the former. That exclusion in particular means that many acts which are regarded as hara by Maori are not included as offences under the Bill.

Secondly, the crucial notion of individuated criminal responsibility in the Bill fails to acknowledge the Maori idea of collective liability. This lack of acknowledgement is unjust and culturally arrogant. It perpetuates the dominance of imposed legal processes and illustrates the role of the law, and the use of this Bill, as tools of socio-racial oppression and Pakeha power.

III THE CRIMINAL LAW AS AN INSTRUMENT OF OPPRESSION

In the current political climate, for a Maori to use terms such as "oppression" or "subjugation" is to invite the label of "radical". However such terms merely encapsulate a number of "legal" facts: they refer to a denial of rights, a rejection of alternative views, a dismissal of different realities.

The Pakeha law has been responsible for each of these abuses throughout the colonial and post-colonial history of Aotearoa. Indeed, one historian has stated that "the concept of the rule of law [has been] prostituted ... in the pursuit of white supremacy".[10]

There are many ways in which the law can be oppressive. It may be overtly oppressive by denying people their rights through specific legal provision. An example of this is the Maori Prisoners Act 1880 which allowed imprisonment of Maori without trial. It may oppress covertly, by alleging a protection or recognition of one set of rights which in reality allows the denial of another. Examples of this type of legislation are the various Native Land Acts which were allegedly passed to give Maori the same "rights" as individual Pakeha land owners, but which in effect destroyed communal title and thus deprived the tribes of their land base. A more recent example is the current Runanga Iwi Bill which is allegedly aimed at restoring rangatiratanga or authority to the tribes, but which in effect reaffirms the subordination of iwi structures to the Crown.

The law may also oppress by exclusion: by establishing legal processes based in a specific cultural context that ignore or fail to recognise different cultural perspectives. The adoption law falls into this category. Based on a specific Pakeha concept of adoptive rights it ignores the traditional Maori concepts of whangai and tautoko whanau which recognised a different set of needs and a different set of child-rearing practices.

Finally, a law may be oppressive not so much in its provisions, but in its application. Thus the various rating provisions in local government legislation have been drafted purely to ensure income for Local Bodies and to provide penalties for non-payment: an apparently non-oppressive process. However there is clear evidence that this legislation has been used by many Local Bodies as an instrument to alienate Maori land: it has been used, through the establishment of Esplanade Reserves and other devices, as an instrument of oppression. Maori people have similar perceptions about the use of various summary and criminal provisions. The discretionary power reposed in the police to arrest and prosecute, to define whether certain actions are criminal as encoded in law, is often used in a prejudicial way against young Maori.

It is my contention that the Crimes Bill oppresses in its structure by exclusion, and will oppress in its implementation through discretionary application. The latter contention is beyond the ambit of this paper, but it is necessary to address the former.

The most obvious consequence of the exclusion of Maori cultural perceptions from the Crimes Bill, and indeed the criminal law in general, is that particular acts regarded as hara are not recognised. It is not possible or appropriate in this forum to discuss the many facets of tapu, the breach of which creates a hara. However it may be helpful to

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10 A Ward, "Law and Law Enforcement On The New Zealand Frontier" (1971) 5 NZ Journal of History 148.

briefly traverse what has become known as the "Haka Party Incident", as it clearly illustrates the failure of the Pakeha law to acknowledge hara.[11]

As you may recall, the incident arose in 1979 when a group of Auckland University engineering students attempted to perform their annual "haka" as part of Graduation celebrations. Their version consisted largely of various masturbatory and copulatory gestures accompanied by words, in English, explaining their skill at having sexual intercourse with various birds and animals. For many years this performance had been opposed by Maori people.

That opposition was based on the simple cultural view that the haka was an important expression of, and appealed to, the essence of ihi, wehi, and wana, which contribute to the mauri or inner strength of a person. The concept of mauri is inter-dependent with the idea of a person's tapu: to demean an appeal to it was therefore to abuse tapu. Had such an abuse occurred within the context of Maori law a hara would have been committed, an act of extremely offensive behaviour.

Beyond the confines of Maori law, the engineers' performance was of course culturally offensive as well as obscene. Yet the protests from many sections of the Maori community had been consistently ignored. A final series of formal complaints to the University and the engineers were similarly dismissed. Against this background a group of Maori students attempted to physically stop the performance and in the fracas several engineers were allegedly assaulted. The Maori students were charged with a number of offences under the Crimes Act 1961, including injuring with intent and rioting. The media exhibited its usual lack of understanding of Maori issues and spoke of racial conflagration and the need for Maori radicals to be subdued. The issue of the hurt and offense caused to Maori, the commission of a hara, was ignored.

In the Court, it was similarly ignored since it was not part of "the law", and the reality of the cultural hurt itself, as distinct from the hara, was dismissed, because the judge found:

> ... wholly unattractive and unacceptable the proposition that if one group regards itself as culturally affronted by another that excuses or makes lawful conduct by the affronted which would otherwise be unlawful.

The second substantive consequence of dismissing Maori perceptions is that the notion of criminal responsibility remains individuated and limited. The practical consequence of this restriction is that the liability for many acts which would be recognised by Maori as hara are not subject to criminal sanction. This most often occurs in the context of institutional violence, and has both historical and contemporary manifestations.

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11 See also K Hazlehurst, *Racial Conflict and resolution in New Zealand: the haka party incident and its aftermath, 1979-1980* (1988).

Thus, the transportation of Parihaka people to Dunedin last century, and their incarceration in unhealthy conditions which led to the subsequent death of some prisoners, is still regarded as a hara for which the agents of the State were collectively liable. In more recent times, the tragic death of a Maori patient at Oakley Hospital in 1982 resulted from what the Committee of Inquiry called an "unacceptable sequence of events".[12] In Maori law, the authorities responsible for those events had committed a hara - they were criminally liable. A similar concept of responsibility would attach to penal authorities in many of the cases of Maori deaths in prison.

Such responsibility is excluded from the Crimes Bill with its emphasis on direct as opposed to indirect, individual as opposed to group, liability. The concept of actus reus does not extend to the indirect acts of institutions and collectives.

In its definition of responsibility the Bill therefore reaffirms its eurocentric values. It ignores the Maori view of responsibility which looks not just at the definition of crime, but at the collective group or area from which the hurt came. By failing to recognise that sense of responsibility the Bill confirms the Maori perception that much violence directed at their people, and institutional violence in particular, will be unpunished. It thus reinforces the view that the law and institutions of Pakeha society act in concert as instruments of oppression.

IV THE BILL AND THE TREATY

It is submitted that from a Maori perspective this Bill is in breach of the Treaty of Waitangi.

To Maori people the Treaty provides the ultimate protection for their way of life, their institutions, and their culture: it is a mechanism to protect their taonga. Under article 1 of the Maori version, the Maori gave kawanatanga to the Queen. To the Maori, this term meant simply that the Queen should provide for the good order and security of the country by exercising control over the Pakeha settlers, while recognising the special rights which accompanied the tangata whenua status of the Maori. Recognition of these rights carried with it an acknowledgement of the laws and institutions existing within Maori society. To ensure their maintenance in a rapidly changing world, the Maori saw those laws as operating in a parallel system to that of the Crown. To the Pakeha however, kawanatanga corresponded to the more absolute concept of sovereignty ceded by article 1 of the English version. This clearly foresaw the ultimate supremacy of the Pakeha way.

The undertaking to preserve "other properties" in article 2 was translated to include "all things highly prized such as their own customs and culture". However although Maori law was frequently described as a "quaint custom", it has never been regarded as sufficiently quaint to be protected under article 2. Neither has there been an acceptance of the Maori belief that the "tino rangatiratanga" guaranteed over those customs was an

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12 *Report of the Committee of Inquiry into Procedures at Oakley Hospital and Related Matters* (1983).

assertion of authority and control. Any recognition of Maori law, Maori authority, and Maori participation in general law-making processes was excluded. In effect, this has meant that the Treaty has been used to deny Maori involvement in, and thus excluded Maori values from, the law-making process.

Within a Maori context, there seems no principle in Maori or Pakeha law which permits one system to thus unilaterally deny the pre-existing rights of other people, or to exclude them from the processes of law-making. In fact it would simply seem to be the height of monocultural arrogance for one system to assume that it can peaceably remove ancient rights to which it did not contribute, over which it had no sanction, and in which it was not recognised. To do so merely establishes a fiction whereby the Pakeha law in effect says that the Maori had no rights to their land, language and culture, unless they are granted by the Pakeha. That the post-Treaty Pakeha law has adopted this fictional denial of the right of Maori people to be themselves does not diminish the fact of their basic Treaty rights.

In relation to the Crimes Bill, article 2 of the Maori version of the Treaty guarantees the right of rangatiratanga over taonga or prized things. In article 4, the Treaty ensures protection of "te ritenga Maori", that is, the basic threads of law, religion, language, and other taonga which wove Maori society together. Those articles in conjunction recognise the general authority of Maori people to monitor the conduct of their own.

In a specific sense, article 3 reinforces that authority with the provision that Maori people have the same rights as British people. This does not mean that they are merely to be subject to the same law, but that they have the same right as Pakeha to develop and maintain the legal processes best suited to implement their desired form of social order.

By failing to allow Maori to address Maori offending within their own system of justice, and by taking away from them the right to define what actions could be subject to such a system, the Pakeha law has been consistently in breach of the Treaty.

Such arguments are of course rejected by Pakeha law on the basis of the "one law for all" thesis, and on the grounds that the Maori ceded sovereignty in article 1 of the English version of the Treaty. The fact that sovereignty does not necessarily mean the imposition of Pakeha legal and political processes, and that article 1 of the Maori version only grants kawanatanga, is always ignored.

The Crimes Bill continues this unwillingness to recognise the general Maori perspective on Treaty rights. It also maintains the specific dismissal of Maori "criminal law".

Its monocultural approach merely affirms the rejection of Maori values and in effect renders them irrelevant to the whole notion of criminal law, and hence to the whole basis on which social order may be maintained. That rejection is contrary to the Treaty of Waitangi.

V CONCLUSION

To discuss the Crimes Bill within the above context is not to negate the need for a criminal law, or the need for a clearly definable code of social conduct. Rather it is simply to acknowledge that the bases of that code are culturally and politically defined, and that that definition is dismissive of, and harmful to, Maori values. Those values have an inherent validity as the ancient cultural expression of the tangata whenua. They also have a special consitutional validity as being part of those taonga and that notion of rangatiratanga guaranteed in article 2 of the Treaty of Waitangi.

By not acknowledging these notions the Crimes Bill fails to prescribe a code that has meaning and philosophical relevance to all citizens of Aotearoa.